

*In the Matter of Lauren Casey, Principal Community Program Specialist (PS2422K),
Department of Human Services
DOP Docket No. 2003-1591
(Merit System Board, decided September 22, 2004)*

Lauren Casey appeals the administration of the examination for Principal Community Program Specialist (PS2422K), Department of Human Services.

The subject promotional examination was administered as a written examination on October 17, 2002. Ms. Casey requested a reasonable accommodation for the test as she is blind. The Division of Selection Services (Selection Services) granted Ms. Casey's request for an accommodation and provided her with a reader and marker, additional time and a separate room. Candidates for the subject examination were required to answer questions 1 through 60 in the test booklet. However, Ms. Casey did not answer questions 31 through 40. Otherwise, Ms. Casey answered 28 questions correctly. The passing point for the subject examination was 30 correct answers. Therefore, Ms. Casey did not receive a passing score on the subject examination. The examination resulted in a list, consisting of 26 eligibles, which promulgated on November 21, 2002 and expires on November 20, 2005. It is noted that 10 eligibles remain on the subject eligible list.

On appeal¹ to the Merit System Board (Board), Ms. Casey asserts that she was unable to answer questions 31 through 40 since the questions referred to a visual calendar she was unable to utilize since she is completely blind. Ms. Casey asserts that Selection Services provided her with a reader in order for her to take the examination. However, she contends that since she was unable to utilize the calendar, the reader would have been the one to answer the questions and not her. Therefore, Ms. Casey asserts that a raised or tactile calendar should have been provided for her use.

CONCLUSION

The ADA requires that a "reasonable accommodation" be provided to a *qualified* individual. Under the Americans with Disabilities Act (ADA), 42 *U.S.C.A.* sec. 12101, *et seq.*, the term "reasonable accommodation" means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate

¹ Ms. Casey appealed the administration of the examination at the test facility on October 17, 2002.

adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities (emphasis added). See 29 C.F.R. § 1630.2(o) (1999). The ADA does not provide the “correct” answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. See 29 C.F.R. § 1630.2(o) and 29 C.F.R. § 1630.9.

In the present matter, Ms. Casey was provided with a reasonable accommodation in order for her to take the subject examination. See *N.J.A.C.* 4A:4-2.14. However, even with the accommodation of a reader, Ms. Casey was unable to answer 10 questions, due to her disability. Ms. Casey argues that in order for her to have answered those questions, a raised or tactile calendar should have been provided. By only providing a reader to Ms. Casey, she was unable to utilize the calendar to answer the questions as the other candidates for the examination were able to do. The Board agrees with Ms. Casey that in the instant matter, an additional accommodation of a raised or tactile calendar or an alternate 10 questions not requiring the use of such a calendar should have been provided. Consequently, it is appropriate that Ms. Casey’s score be prorated based on her performance on the examination. See *In the Matter of Robert Marcus, Assistant District Parole Supervisor, Juvenile Justice (PS0857P), Juvenile Justice Commission* (MSB, decided August 11, 2004) (The Board prorated the score of an eligible based on a discrepancy between the test booklet cover and the stub portion of his answer sheet, regarding the questions he was to answer). Ms. Casey was able to answer 50 of the 60 questions on the examination. Of those 50 questions, Ms. Casey answered 28 correct, or 56%. Accordingly, Ms. Casey should be granted an additional six correct responses out of the 10 questions she was unable to answer. Based on these additional correct responses, Ms. Casey’s raw score should be adjusted to 34.

Additionally, the Board requests that Selection Services review its reasonable accommodation process to determine what additional accommodations, *i.e.*, raised or tactile reading aides, or different questions which would not require aides, should be offered to visually impaired applicants for similar questions in the future.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant’s score be adjusted to reflect an additional six correct responses and her name added to the Principal Community Program Specialist (PS2422K), Department of Human Services eligible list for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.